IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1438 of 2003
with
CROSS OBJECTIONS NO. 4 OF 2004
AND
CIVIL APPLICATION NO. 5391 OF 2003

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NATIONAL INSURANCE CO. LTD

Versus

HEIRS OF DECD. MOHAMED HUSAIN GULAM HUSAIN SAIYED

Appearance:

MR SUNIL B PARIKH for appellant/applicant in F.A. No. 1438 of 2003 and C.A.No. 5391 of 2003 and for respondent Insurance Co. in Cross Objections No.4 of 2004

MR AJ SHASTRI for Respondent No. 1 in F.A.No. 1438 of 2003, C.A.No.5391 of 2003 and Cross Objections No.4 of 2004

MR UTPAL M PANCHAL for Respondent No. 2 in F.A. No.1438 of 2003, C.A.No.5391 of 2003 and for applicant in Cross Objections No.4 of 2004.

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 22/01/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.C. PATEL)

Respondent no.1 and three others were the heirs and dependents of deceased Mohamed Husain Gulam Husain Saiyed, who was employed as Driver in the Truck owned by respondent no.2 - Mohamed Farukh Gulam Husain Shaikh. On 16.11.1994 deceased was driving the truck No. GJ-3-T 438 to Bombay and in the early morning on 17.11.1994 when he got down and went to answer the call of nature, he was hit by a train and suffered injuries. He was taken to hospital for treatment, but he succumbed to the injuries sustained by him.

2. Respondent no.1 Joharabanu Mohamed Husain and her three children filed an application for compensation under the Workmen's Compensation Act ('the Act' for short), being Workmen Compensation Case (Fatal) No. 21 of 1995 in the Court of Ex-Officio Commissioner for the Workmen's Compensation and Judge, Labour Court No.2, at Junagadh. The learned Commissioner, after recording the evidence, came to the conclusion that deceased Mohamed Husain Gulam Husain Saiyed suffered injuries in course of employment of respondent no.2 and that he died because of the injuries and hence, the claimants, who were his dependents, were entitled to compensation under the Act. He recorded the conclusion that the deceased, at the relevant time, was aged 31 years. He found that his monthly wages were Rs.1,700/-, but for the purpose of assessing compensation under the Act, took them to be Rs.1,000/- and by multiplying it by the relevant factor of 205.95, worked out the amount of compensation at Rs.2,05,950/-. He, therefore, passed the judgment and award dated 8.5.2003 and directed respondent no.2 employer and the appellant Insurance Company to pay the said amount with interest at 6% from the date of the accident. Both the Insurance Company and the employer were held liable to pay the said amount jointly and severally. In addition, the employer was also ordered to deposit the penalty at the rate of 25%.

3. The appellant Insurance Company has filed this appeal under Section 30 of the Act challenging the said

order of the Commissioner.

4. Learned Advocate Mr.Parikh for the appellant submitted that the Commissioner made an error in applying the provisions of the Act for arriving at the amount of compensation. He drew our attention to the provisions of Section 4(1)(a) of the Act. In the present case, the accident occurred on 17.11.1994 and the provisions of Section 4 were amended with effect from 15.9.1995. However, Mr.Parikh submitted that in view of the decision of the Supreme Court in Kerala State Electricity Board v. Valsala K. (2000 ACJ 5), the relevant date for determination of compensation is the date of the accident and not the date of adjudication of the claim and hence the provisions of Section 4 as amended with effect from 15.9.1995 cannot be applied, but the amount of compensation has to be calculated according to the provisions which were in force when the accident occurred on 17.11.1994. Learned Advocate Mr.A.J.Shastri for respondent no.1 could not dispute this position. Accordingly, the amount of compensation has to be assessed by applying the provisions of the Act as they stood on 17.11.1994.

5. Under Section 4(1)(a), the amount of compensation where the death results from the injury and an amount equal to forty per cent of the monthly wages of the deceased workman multiplied by the relevant factor. Again Explanation-II to Section 4(a) provides that where the monthly wages of a workman exceed one thousand rupees, his monthly wages for the purposes of clause (a) and (b) shall be deemed to be one thousand rupees only. In the present case, the finding of the Commissioner is that the monthly wages of the deceased were Rs.1,700/-. However, in view of the Explanation, the monthly wages of the deceased for the purpose of awarding compensation under the Act have to be taken as Rs.1,000/-. Forty per cent of the said amount comes to Rs.400/-. It is not in dispute that the relevant factor under Schedule-IV will be 205.95 as applied by the Commissioner. Hence the figure of Rs.400/- is to be multiplied by the said factor, i.e. 205.95 and the amount works out at Rs.82,380/-. Learned Commissioner awarded Rs.2,05,950/by applying the relevant factor to the figure of Rs.1,000/-. It is obvious that he has committed an error of law in applying the provisions of the Act and calculated the amount of compensation at that figure. Respondent no.1 and other defendants are entitled to Rs.82,380/- as compensation and not Rs.2,05,950/- as awarded by the Commissioner.

6. Respondent no.2, who was the employer of the deceased, has filed Cross Objections No.4 of 2004. He has challenged both the amount of compensation and the penalty part of 25%. However, assuming that the Cross Objections are maintainable in the appeal filed by the Insurance Company under Section 30 of the Act, the same can be treated as an appeal under Section 30 and since respondent no.2 has not produced the certificate of the Commissioner to the effect that he has deposited with him the amount payable under the order as required under the provisions of Section 30 of the Act, the Cross Objections cannot be entertained and they are accordingly dismissed.

7. In view of the above discussion, the appeal is allowed. It is held that respondent no.1 and three other defendants who were the original claimants are entitled to receive Rs.82,400/- (Rupees Eightytwo thousand and four hundred only) as compensation instead of Rs.2,05,950/- as awarded by the Commissioner. The order of the Commissioner shall stand modified to the said extent. The rest of the order made by the Commissioner is confirmed.

8. It appears that a Division Bench of this Court passed the following order on 4.8.2003:

> "On depositing a sum of Rs.3,000/- [Rupees three thousand only], being the cost of respondent no.1, within a period of one week from today, the office shall issue notice to respondents making it returnable on 1.9.2003."

9. It is stated at the Bar that the said amount of Rs.3,000/- has been deposited. Respondent no.1 will be entitled to withdraw the said amount as costs. The appellant has already deposited the amount payable under the impugned order before the Commissioner. Out of the said amount, the Commissioner shall disburse to the claimants the amount to which they are entitled and shall refund the excess amount to the Insurance Company.

10. In view of the above order passed in the main appeal, the Civil Application for stay does not survive and it is rejected.

(Kshitij R. Vyas, J.)

(M.C. Patel, J.)
Sreeram.